

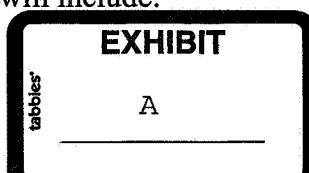
**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

BURCHICK CONSTRUCTION COMPANY, )  
INC., )  
                                       )  
Plaintiff,                         ) Civil Docket No. 05-CV-12E  
                                       )  
vs.                                 )  
                                       )  
HBE CORPORATION,                 ) Judge McLaughlin  
                                       )  
Defendant.                         )

**NOTICE OF DEPOSITION TO HBE CORPORATION  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)**

To:   HBE Corporation  
c/o John Riordan, Esquire  
Polito & Smock, PC  
Four Gateway Center, Suite 400  
Pittsburgh, PA 15222-1237

**PLEASE TAKE NOTICE** that on September 14, 2005, at 9:30 a.m., the undersigned shall proceed at the offices of Reed Smith LLP, 435 Sixth Avenue, Pittsburgh, Pennsylvania 15219, before an officer duly authorized to administer oaths to take the testimony upon oral examination of the above mentioned Deponent. The above mentioned Deponent is hereby notified to appear for this deposition pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. Matters to be inquired into will include:



1. Payments from UPMC to HBE Corporation<sup>1</sup> under the Medical Center Contract and the Behavioral Health Contract, including the calculation of the amount of retainage withheld by UPMC, during the course of the Projects and at present.

2. The requirements under the Medical Center Contract and the Behavioral Health Contract with regards to insurance information and the OCIP program on the Project.

3. Any work, analysis or opinions rendered or prepared by Construction Engineering Consultants with respect to Burchick's work on the Project.

4. The factual basis underlying HBE's Backcharge issued in connection with the Medical Center Contract between Burchick and HBE including:

- (a) All items of allegedly defective work by Burchick which form the basis for the Backcharge;
- (b) The scope of work of the Backcharge Subcontractors; and
- (c) Payments made to the Backcharge Subcontractors.

6. The decision to withhold payment of \$73,660.40 in retainage from Burchick under the Main Building Contract and the decision to withhold \$35,650.00 in retainage under the Behavioral Health Facility Contract.

7. The corporate organization and internal hierarchy at HBE for HBE employees involved in the Projects, including site superintendence.

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1 Capitalized terms have the meaning ascribed to them in the attached "Definitions."

8. The administration of the Medical Center Contract and the Behavioral Health Contract by HBE.
9. The substance of the February 26, 2004, meeting between representatives of Burchick and HBE.



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**DEFINITIONS**

- A. "UPMC" shall mean and refer to the owner of the Projects.
- B. "Backcharge" shall mean and refer to HBE's backcharge, C-902F, in connection with The Medical Center Contract.
- C. "Backcharge Subcontractors" shall mean and refer to each and every subcontractor, material supplier or vendor who supplied labor or materials which HBE claims make up any component of the Backcharge, including but not limited to Penn Installations, Inc., Easley & Rivers, Thomarios and L.O. Bouquin.
- D. "Projects" shall mean and refer collectively to the UPMC Northwest Medical Center and the UPMC Northwest Behavioral Health Facility.
- E. "The Medical Center Contract" shall mean and refer to the written contract between Burchick and HBE, No. 5187, for labor and services provided in connection with the UPMC Northwest Medical Center.
- F. "The Behavioral Health Contract" shall mean and refer to the written contract between Burchick and HBE, No. 5195 for labor and services provided in connection with the UPMC Northwest Behavioral Health Facility.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of September, 2005, I caused a true and correct copy of the foregoing **NOTICE OF DEPOSITION TO HBE CORPORATION PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 30(b)(6)**, via Hand Delivery, to the following:

John H. Riordan, Jr., Esquire  
Polito & Smock, P.C.  
Four Gateway Center, Suite 400  
444 Liberty Avenue  
Pittsburgh, PA 15222-1237



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Kurt F. Fernsler